IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 165 of 2003

ABDUL GAFAR
V/S
RAMESHWAR LAL @ RAM SINGH

Mr. S L JAIN, for the appellant / petitioner

Mr. NK MEHTA, for the respondent

Date of Order : 15.9.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It is contended by learned counsel for the appellant that in the present case, the plaintiff was not ready and willing to perform his part of the contract, inasmuch as, according to the agreement dated 6.11.93, the payment was to be made on 20.11.93, and sale deed was to be got executed, while from the plaintiff's evidence, which is contradictory, it is not established that the plaintiff ever approached the defendant before 20.11.93, and therefore, the present suit could not be maintained.

The other submission made is that the plaintiff could file the suit for specific performance of the contract only, and therein in the alternative, he could claim the relief for return of the amount of compensation, but mere suit for recovery of money could not be maintained. It was also contended that the agreement was of

November 1993, and the suit has been filed in October 1996, which is grossly belated.

I have considered the submissions, and do not find any force in either of them. It is established law that in agreement of sale for immovable property, ordinarily the time is not essence of the contract, moreso, in the present case, there is no stipulation in the agreement that if the plaintiff does not get the sale deed registered upto 20.11.93, the amount of earnest money would stand forfeited. It is a different story, as to whether even if that condition would have been there, whether time would have been essence of contract or not. In these circumstances, even if it is assumed that the plaintiff did not approach the defendant on or before 20.11.93, that by itself cannot disentitle the plaintiff to claim the relief, which he would have otherwise been entitled, in accordance with law. In this sequence, it is significant to note that admittedly, the title of the defendant came under cloud, and the litigation between the defendant and the Municipality terminated in favour of the Municipality, and thus, the contract no more remained capable of being enforced, with the result that in view of the provisions of Section 65 of the Contract Act, the plaintiff is very much entitled to recover back the amount paid under the agreement, alongwith interest. In these circumstances, it was not at all necessary for the plaintiff to file a suit for specific performance either, at the risk of being

disentitled to get the decree for money.

No other point was argued.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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